No.80-514

Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

LOCAL UNION NO. 137; LOCAL UNION NO. 150; LOCAL UNION NO. 278; LOCAL UNION NO. 296; LOCAL UNION NO. 315; LOCAL UNION NO. 386; LOCAL UNION NO. 431; LOCAL UNION NO. 439; LOCAL UNION NO. 490; LOCAL UNION NO. 533; LOCAL UNION NO. 588; LOCAL UNION NO. 624; LOCAL UNION NO. 980, all affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioners,

v.

FRITO-LAY, INC.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED[1]

The issue presented for review by Petitioners is more properly stated as follows:[2]

1. Whether the court of appeals correctly concluded that substantial evidence in the record supports the district court's factual finding that the object of the Union's strike was to force or require Frito-Lay to bargain and act as if it belonged to an employer organization.

In the event the Petition is granted to determine the foregoing question, Petitioners have requested the Court to review two additional questions, which are more properly stated as follows:

2. Whether the court of appeals correctly concluded that substantial evidence in the record supports the district court's factual finding that the Union did not abandon its illegal strike objective prior to commencement of the strike.

3. Whether the court of appeals correctly concluded that substantial evidence in the record supports the district court's finding that the Union's illegal strike objective was a substantial—if not the sole—cause of the strike, thus entitling Frito-Lay to recover damages attributable to the strike.

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[1]Respondent, Frito-Lay, Inc., is a wholly-owned subsidiary of PepsiCo, Inc.

[2]The Union concedes that the court of appeals and the district court correctly held that Section 8(b)(4)(A) proscribes forced multi-employer bargaining and not merely forced membership in a formal multi-employer organization. (Petition, at 12) In view of that concession, this Court should summarily reject the Union's attempt to transform a simple factual finding of two lower courts into a novel question of law that warrants *certiorari* review.

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IN THE

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OCTOBER TERM, 1980

No. 80-514

LOCAL UNION NO. 137; LOCAL UNION NO. 150; LOCAL UNION NO. 278; LOCAL UNION NO. 296; LOCAL UNION NO. 315; LOCAL UNION NO. 386; LOCAL UNION NO. 431; LOCAL UNION NO. 439; LOCAL UNION NO. 490; LOCAL UNION NO. 533; LOCAL UNION NO. 588; LOCAL UNION NO. 624; LOCAL UNION NO. 980, all affiliated with the INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioners,

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FRITO-LAY, INC.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

Respondent, Frito-Lay, Inc., respectfully requests that this Court deny the Petition for Writ of Certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit.

STATEMENT OF THE CASE

Frito-Lay filed its Complaint in May of 1974, alleging that the defendant Union Locals (hereinafter, the "Union") were then engaged in a strike in Central and Northern California having an illegal object of forcing or requiring Frito-Lay to join an employer organization in violation of Section 8(b)(4)(A) of the Labor Management Relations Act, 29 U.S.C. §151, *et seq*, (hereinafter, the "Act"). Subject matter jurisdiction was based upon Section 303 of the Act, which provides that whoever shall be injured in his business by an unfair labor practice as defined in Section 8(b)(4) of the Act may bring suit in federal district court to recover damages and the cost of the suit.

In ruling upon defendants' Motion to Dismiss the Second Amended Complaint[3] (R. 167-169), the trial court issued a Memorandum of Opinion (R. 196-207) detailing its interpretation of Section 8(b)(4)(A) as applied to the allegations of this case. The court carefully reviewed the legislative history of Section 8(b)(4)(A) and concluded that Congress intended the proscription against "forcing or requiring any employer . . . to join any . . . employer organization" to prohibit involuntary multi-employer bargaining. Accordingly, the court held that Section 8(b)(4)(A) proscribes not only strikes where an object thereof is to force an employer to join a formal employer organization, but also strikes where an object thereof is to force several employers to act in effect

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[3]In the Second Amended Complaint, Frito-Lay set forth in detail its factual allegations as of that date.

Court to amend its Findings of Fact, Conclusions of Law and Order, dated February 4, 1977, as follows:

1. By deleting the designation of Defendants in the Caption, and substituting in lieu thereof the following:

> Local Union No. 137, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, *et al.*

2. By adding to the Court's Findings of Fact a new Paragraph to read as follows:

> 3. The term "defendants" as in Paragraphs (1) and (2), above, refers only to the defendants Local Union No. 137, Marysville, California; Local Union No. 150, Sacramento, California; Local Union No. 278, San Francisco, California; Local Union No. 296, San Jose, California; Local Union No. 315, Martinez, California; Local Union No. 386, Modesto, California; Local Union No. 431, Fresno, California; Local Union No. 439, Stockton, California; Local Union No. 490, Vallejo, California; Local Union No. 533, Sparks, Nevada; Local Union No. 588, Oakland, California; Local Union No. 624, Novato, California; Local Union No. 890, Salinas, California; Local Union No. 912, Watsonville, California; Local Union No. 980, Santa Rosa, California.

3. By inserting after the word "defendants" in Paragraph (1), on page 2, line 6, of the Court's Conclusions of Law the following phrase:

> Local Union No. 137, Marysville, California; Local Union No. 150, Sacramento, California; Local Union No. 278, San Francisco, California; Local Union No. 296, San Jose, California; Local Union No. 315, Mar-

tinez, California; Local Union No. 386, Modesto, California; Local Union No. 431, Fresno, California; Local Union No. 439, Stockton, California; Local Union No. 490, Vallejo, California; Local Union No. 533, Sparks, Nevada; Local Union No. 588, Oakland, California; Local Union No. 624, Novato, California; Local Union No. 890, Salinas, California; Local Union No. 912, Watsonville, California; Local Union No. 980, Santa Rosa, California.

BRUNDAGE, BEESON, TAYER & KOVACH

By: .....
Kenneth N. Silbert
Attorneys for

SO ORDERED: 3-4-77

CHARLES B. RENFREW
United States District Judge

Appendix "G"

The Amendment to Findings of Fact, Conclusions of Law and Orders of the United States District Court for the Northern District of California, dated and filed on March 21, 1977, is reprinted below.

FILED
MAR 21 1977
William L. Whittaker, *Clerk*

United States District Court
Northern District of California

No. C-74-1092 CBR

FRITO-LAY, INC.,

Plaintiff,

v.

LOCAL UNION No. 137, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America *et al.*,

Defendants.

AMENDMENT TO FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDERS

With the consent of all parties, the Court amends its Findings of Fact, Conclusions of Law and Order, dated March 26, 1976, and its Findings of Fact, Conclusions of Law and Order, dated February 4, 1977, as follows:

The terms "defendant," "defendants," and "defendant local unions," as used in paragraphs 7 through 29 of the

Findings of Fact and paragraph 4 of the Conclusions of Law dated March 26, 1976, and as used in the Findings of Fact, Conclusions of Law and Order dated February 4, 1977, do not include defendants Joint Council Number 7 or Joint Council Number 38.

IT IS SO ORDERED, this 21 day of March, 1977.

Consented to by:

CHARLES B. RENFREW
Charles B. Renfrew, Judge
United States District Court

DUANE C. ALDRICH
(by JWD w/permission)
Duane C. Aldrich
Attorney for Plaintiff

KENNETH N. SILBERT
Kenneth N. Silbert
Attorney for Defendants

Appendix "H"

Pages 20, 21 and 22 of the pre-trial deposition of Harry Marashian are reprinted below:

MR. DORN: Q. Was it your practice during the negotiations to handle written notes of discussions that took place during various meetings?

A. Some meetings, yes. Not in all meetings.

Q. Have you given your Attorney all of your files in connection with the negotiation of this contract?

A. Yes, sir.

Q. And there aren't any other documents or notes in your files that you have not provided?

A. No, sir.

(A one-page handwritten document entitled "Potato Chip Meeting" dated 1/28/74 was marked as Plaintiff's Exhibit 4 for identification.)

MR. DORN: Q. The Court Reporter has marked as Plaintiff's Exhibit 4 a one-page document labeled "Potato Chip Meeting, 1:50 p.m., 1/28/74."

Does Plaintiff's Exhibit 4 contain your handwritten notes that were taken at the meeting on January 28?

A. Uh-huh, yes.

Q. Do those notes refresh your memory as to what took place at that meeting with the potato chip companies on January 28?

A. Yes, it does.

Q. Do you remember Mr. Torrisi informing the representatives of the companies at the January 28th meeting that only one contract for the three potato chip companies would be ratified?

A. Yes, I do recall.

Q. You also recall Mr. Torrisi informing the company representatives that group voting would be used to ratify any proposal made by any of the three companies?

A. I believe so.

Q. And do you remember how the compaines responded to Mr. Torrisi's statements regarding group voting and the desire to have one contract?

A. Yes.

Q. What was the response?

A. Negative.

Q. In other words, the companies were unhappy over the group voting?

A. Right.

Q. The companies were unhappy over Mr. Torrisi's statement that there would be one contract ratified for all three companies?

A. As I recall.

Q. Did Mr. Torrisi also state at the January 28th meeting that the Negotiating Committee wanted to meet jointly with all three companies during the negotiations?

A. Yes, as I recall.

Q. And the companies rejected this proposal; is that correct?

A. I believe they did.

Q. Mr. Torrisi made it clear at this first meeting with the three companies that there would be only one contract resulting from these negotiations; is that correct?

A. As I recall, yes.

Q. And that was the position of the Negotiating Committee that there would be only one contract?

A. Right, yes.

Q. And that means one document signed by all three companies?

A. Yes.

Q. How did the Negotiating Committee feel this was possible since the employer group had broken up?

A. I don't know. I couldn't answer that.

Q. Wasn't it the desire of the Negotiating Committee that the multi-employer group remain in existence during these negotiations?

A. Right.

Q. And was part of the strategy of the Negotiating Committee to persuade the employers to re-form the multi-employer group to negotiate the new contract?

A. As I recall, yes.

Q. Was it also part of the strategy of the Negotiating Committee to use group voting in order to persuade the employers to re-form the multi-employer group?

A. Yes, that was.

(A one-page document on the letterhead of General Teamsters' Union Local No. 431 was marked as Plaintiff's Exhibit 5 for identification.)

MR. DORN: Q. The Court Reporter has marked as Plaintiff's Exhibit 5 a one-page document containing a list of names. Can you tell me what this list was made for?

(Pause while Witness examines document.)

THE WITNESS: I am assuming it might be the proposal meeting of the potato

MR. SILBERT: Harry, if you don't know—.

THE WITNESS: I don't know. Okay.

MR. DORN: Q. Does your handwriting appear at any place on this document?